

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5

AMEND ARTICLE 1, SECTION 1200

AND

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5

AMEND ARTICLE 7.5, SECTION 1239

COMMERCIAL VEHICLE SAFETY ALLIANCE, NORTH AMERICAN STANDARD OUT-OF-SERVICE CRITERIA (CHP-R-11-08)

PROBLEM

Current regulations, adopted by reference, major portions of the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria, April 1, 2010, Edition. This criteria outlines conditions by which a commercial vehicle may be placed out of service as a result of an inspection by an authorized representative of the California Highway Patrol (CHP). California Highway Patrol personnel utilize these criteria for determining whether or not a vehicle, its cargo and/or driver is in such an unsafe condition that they are likely to constitute a hazard on a highway and, therefore, should be placed out of service. The Commercial Vehicle Safety Alliance reviews and updates the criteria annually, and in order to remain consistent the CHP must update its regulations to reflect the most current out-of-service criteria available.

PURPOSE OF REGULATIONS

The CHP proposes to update the incorporation by reference of the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria, April 1, 2010, Edition, to the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria, April 1, 2011, Edition, in Title 13, California Code of Regulations (13 CCR). The intent of these criteria is to maintain specific guidelines for determining whether or not a vehicle, its cargo and/or driver is in such an unsafe condition that they are likely to constitute a hazard on the highway including other non substantive changes. This criteria provides consistency for California with its neighboring states, Canada and Mexico, and maintains a regulatory basis for enforcement efforts as they relate to commercial vehicle out of service criteria. Most criteria listed as out of service are also violations of current California Vehicle Code (CVC) statutes or 13 CCR regulations already in effect. Updating regulations to reflect the most current edition will continue to provide the regulatory authority to place the driver and/or vehicle out of service in addition to issuing a citation. The incorporation of Section 1239 and Article 6.5 by reference into Section 1200 and Division 14.85 by reference into Section 1239 will insure cohesive

enforcement of the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria statewide.

Section 34501(a)(1) CVC authorizes the CHP to adopt reasonable rules and regulations which, in the judgment of the Department, are designed to promote the safe operation of vehicles described in Section 34500 CVC and 34500.3 CVC. In addition, Section 2402 CVC provides the Commissioner with the authority to “make and enforce such rules and regulations as may be necessary to carry out the duties of the Department,” and Section 2410 CVC provides the authority for the CHP to place vehicles out of service (Attorney General’s Opinion NS 2520) in order to “ensure safety.”

SECTION BY SECTION OVERVIEW

§1200. Scope.

The CHP proposes that Section 1239 and Article 7.5 be incorporated by reference into 13 CCR. The reference is intended to insure cohesive enforcement statewide of the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria.

§1239. Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria.

The CHP proposes that the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria, April 1, 2011, Edition, and Division 14.85 be incorporated by reference into 13 CCR. The Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria is a document that is annually reviewed and updated by the Commercial Vehicle Safety Alliance, and encompasses a vast cross section of industry and public safety concerns. The Out-of-Service Criteria is an administrative procedure which has been developed to aid the law enforcement officer in determining when a defect or violation has deteriorated to a point where it is likely to result in a breakdown or accident, and must be repaired or corrected before the vehicle and driver are allowed to operate on the highways of North America. It is also important to note the Commercial Vehicle Safety Alliance consists of representatives from law enforcement, truck and bus companies, manufacturers, safety product and service providers, and insurance companies. The adoption is necessary to maintain consistency in inspection processes across North America and to maintain a high level of safety upon the highways.

**Changes to the Commercial Vehicle Safety Alliance, North American Standard
Out-of-Service Criteria (April 1, 2011, Edition):**

The address for the Commercial Vehicle Safety Alliance changes

6303 Ivy Lane
Suite 310
Greenbelt, MD 20770-6143

Driver Out-of-Service Criteria Changes

Part I - Driver

***4. Driver Medical/Physical Requirements**

***b. Medical Certificate**

*(3) Operating a passenger-carrying vehicle without a valid medical certificate in possession. (391.41 (a)) **Declare driver out-of-service.**

Part II - Vehicle

***1. Brake Systems**

***a. Defective Brakes**

*(1) Absence of effective braking action upon application of the service brakes (such as any brake lining /pad failing to move or contact braking surface upon application). (393.48(a))

***b. Front Steering Axle(s) Brakes**

In addition to being included in the 20 percent criterion, the following place a vehicle in an out-of-service condition:

*(1) Any inoperative brake (such as any brake lining /pad failing to move or contact braking surface upon application) or missing brake on either wheel of any steering axle of any vehicle equipped or required to be equipped with steering axle brakes, including the dolly and front axle of a full trailer. This includes tractors required to have steering axle brakes. Missing – (393.42(a)) or Inoperative. (393.48(a))

***j. Low Air Pressure Warning Device**

Low air pressure warning device missing, inoperative, or does not operate continuously if either the primary or secondary reservoir is 55 psi (379 kpa) and below, or ½ of the governor cut-off pressure, whichever is less. (393.51(c))

***1. Tractor Protection System**

Inoperable or missing tractor protection system components including a tractor protection valve and/or trailer supply valve. (393.43(b))

1. The trailer supply valve fails to close before pressure drops below 20 psi (138 kpa) in either the primary or secondary system.

***m. Air Reservoir (Tank)**

An air reservoir (tank) separated at either end from the attachment points(s) allowing movement of more than 1 inch (25.4 mm) in any direction. (396.3 (a)(1))

3. Exhaust Systems

***a.** Any exhaust system, leaking at a point forward of or directly below the driver /sleeper compartment and the vehicle has a condition that permits entry of exhaust fumes into the driver/sleeper compartment. (393.83(g))

7. Securement of Cargo

***e.** Articles or cargo not blocked or positioned to prevent movement in the forward direction by a headerboard, bulkhead, other cargo that is position to prevent movement, or other appropriate blocking devices, is not secured by at least:

(1) One tiedown for articles 5 feet (1.52m) or less in length, and 1,100 pounds (500kg) or less in weight. (393.110(b)(1))

(2) Two tiedowns if the article is:

(a) 5 feet (1.52m) or less in length and more than 1,100 pounds (500kg) in weight; or, 393.110(b)(2)(i)

(b) Longer than 5 feet (1.52m) but less than or equal to 10 feet (3.04m) in length, irrespective of the weight. (393.110(b)(2)(ii))

(2) Two tiedowns if the article is longer than 10 feet (3.04m) and one additional tiedown for every 10 feet (3.04m) or article length, or fraction thereof, beyond the first 10 feet (3.04m) of length. (393.110(b)(3))

***f.** Article(s) of cargo that is blocked, braced or immobilized to prevent movement in the forward direction by a headerboard, bulkhead, other articles which are adequately secured or by an appropriate blocking or immobilization method, is not secured by at least one tie down for every 10 feet (3.04m) of article length, or fraction thereof. 393.110(c)

10. Tires

*a. Any Tire on Any Front Steering Axle(s) of a Power Unit

*(7) So mounted or inflated that it comes in contact with any part of the vehicle.
(396.3(a)(1))

NOTE: An out-of-service condition exists only if the drive tire can be made to contact another component at the time of inspection.

*14. Emergency Exits and/or Electrical Cables and Systems in Engine and Battery Compartments (Buses)

*b. Electrical Cables and Systems in Engine and Battery Compartments

*(2) Loose or corroded connections at battery post. (393.28)

Part IV – Administrative

*3. U.S. Federal Out-of-Service Orders

Operating a commercial motor vehicle while an existing motor carrier out-of-service order issued by the Federal Motor Carrier Safety Administration (FMCSA) is in effect. (Choose from the list of eleven Sections of the Federal Motor Carrier Safety Regulations (CFRs) listed below. **Declare the vehicle out-of-service until such time the motor carrier out of service order issued by FMCSA has been satisfied.**

Description:	Section:
Failure to Pay Fine – Private Carrier	386.83 (a)(1)
Failure to Pay Fine – For –Hire Carrier	386.83 (a)(1)
UNSAT/UNFIT – Placarded HM	385.13 (a)(1)
UNSAT/UNFIT – Passengers Carriers	385.13 (a)(1)
UNSAT/UNFIT – Property Carriers	385.13 (a)(2)
New Entrant – Failure to Respond to Expedited Action Notification	385.308 (d)
New Entrant – failure to Safety Audit	385.325 (c)
New Entrant – Refusal to Audit/No Contact	385.337 (b)
Imminent Hazard – Motor Carrier	386.72 (b)(4)
Imminent Hazard – Intermodal Equipment Provider	386.72 (b)(4)
MX Carrier – Inadequate Corrective Action	385.105 (b)
MX Carrier – UNSAT/UNFIT	385.111 (a)
MX Carrier – Suspended operating Authority for UNSAT Rating or Failed Safety Audit	385.111 (c)
MX Carrier – Revoked Operating Authority	385.111 (c)(2)

HISTORY/BACKGROUND

In 1980, the Western States Commercial Vehicle Safety Alliance was established when agencies from seven western states and two Canadian provinces met to discuss common needs and ways to create uniformity of inspection standards, procedures and practices with the intent of improving commercial vehicle safety. The Western States Commercial Vehicle Safety Alliance brought together representatives from federal, state and provincial governmental agencies as well as the private industry to develop common standards and practices. As a result, the organization established the following initial goals:

- Avoid duplication of inspection efforts by the various jurisdictions;
- Improve the safety of equipment being operated on all highways;
- Minimize inspection delays for the operating industry;
- Increase the number of on-highway inspections;
- Bring about an overall improvement in commercial vehicle and hazardous materials transportation safety;
- Improve commercial driver safety performance;
- Improve compliance with the hazardous materials transportation regulations; and
- Bring about improvements in the collection, dissemination, and use of operational motor carrier safety data and research findings.

In July 1981, the CHP entered into a memorandum of understanding with the Western States Commercial Vehicle Safety Alliance. The purpose of the memorandum was to maximize the use of commercial motor vehicle driver and cargo inspection resources; to avoid duplication of effort in expanding the number of inspections performed in a region; to advance uniformity of inspection; and to minimize delays incurred by industry as a result of this type of enforcement activity. As a Western States Commercial Vehicle Safety Alliance member, California agreed to implement procedures pursuant to minimum inspection criteria and out-of-service criteria. Shortly thereafter in 1982, the Western States Commercial Vehicle Safety Alliance became the Commercial Vehicle Safety Alliance. In an effort to maintain consistency and uniformity among the member states, the Commercial Vehicle Safety Alliance established the following:

- The Uniform North American Commercial Vehicle Standard Inspection Procedures;
- The adoption of the uniform out-of-service criteria;

- The adoption of the uniform severity rating of out-of-service violations and maximum fine schedules;
- The development of uniform training curriculum for certified Commercial Vehicle Safety Alliance inspectors;
- The development of uniform inspection procedures for vehicles transporting spent nuclear fuel, high-level radioactive waste and Transuranics (commonly known as the "Enhanced Inspection Procedure");
- The adoption of uniform bus inspection procedures; and
- The development of uniform cargo tank inspection procedures.

The out-of-service criteria is developed through the Commercial Vehicle Safety Alliance with participation from federal, state and provincial officials as well as industry representatives, including appropriate manufacturers and other interested parties. Before revisions to the out-of-service criteria are presented for adoption, a need for the change must be established by accompanying documentation, such as:

- Accident experience/statistics;
- Recommendations, including technical analysis;
- A description showing a new technology; or
- A need for redefinition or clarification of existing criteria.

Any modifications to the criteria require ratification by the general membership at the annual Commercial Vehicle Safety Alliance conference held each fall. Approved modifications are published and become effective on April 1st of each year, with the exception of 2004, where the modifications became effective January 1st.

The Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria is not contained in federal safety regulations. It is an administrative procedure which has been developed to aid the law enforcement officer in determining when a defect or violation has deteriorated to a point where it is likely to result in a breakdown or accident, and must be repaired or corrected before the vehicle and driver are allowed to operate on the highways of North America. It is also important to note the Commercial Vehicle Safety Alliance consists of representatives from law enforcement, truck and bus companies, manufacturers, safety product and service providers, and insurance companies.

STUDIES/RELATED FACTS

The following documents lend support or are otherwise related to this proposed rulemaking. Copies of these documents, or relevant portions thereof, can be obtained from the CHP by telephoning the Commercial Vehicle Section at (916) 843-3400, 1-800-735-2929 (TT/TDD), 1-800-735-2922 (Voice), or via Facsimile at (916) 322-3154. The rulemaking file is available for inspection at the CHP, Commercial Vehicle Section, 601 North 7th Street, Sacramento, California. Interested parties are advised to call for an appointment.

- Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria; April 1, 2010, Edition.
- Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria; April 1, 2011, Edition.
- Attorney General Opinion NS 2520, Authority to place vehicles out of service.

ALTERNATIVES

The CHP has not identified, nor been made aware of, an alternative that would be more effective than the proposed action.

Alternatives Identified and Rejected:

***Alternative 1:** Do nothing and allow outdated reference to remain in 13 CCR:* This alternative was not selected because the continued use of outdated criteria would defeat the purpose of promoting uniformity and consistency with neighboring states.

***Alternative 2:** Discontinue use of Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria:* Discontinuing the use of the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria as an enforcement tool by CHP officers may result in:

- Increased numbers of unsafe commercial vehicles being operated on California highways;
- Lack of inspection uniformity with neighboring states; and
- Increased equipment-related traffic collisions involving commercial vehicles.

The estimated cost of this alternative could exceed one million dollars. This estimated figure was derived based on additional time accident investigators may spend investigating collisions resulting from increased numbers of unsafe vehicles on California roadways. Additional costs may be incurred because commercial officers may reinspect vehicles that have already been inspected outside of California because the CHP would not recognize vehicle inspections performed elsewhere.

Alternative 3: Update 13 CCR to current revision of the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria: This is the Alternative selected as it best meets the safety needs of the public and the Department.

Performance vs. Prescriptive Standards

Due to the nature of the equipment (brakes, frames, fuel systems, etc.) and the standards (driver licenses, hours of service, etc.) to which this criteria will be applied, it is necessary to apply prescriptive standards. Equipment service limits are critical in commercial vehicles and must be closely adhered to in order to ensure the proper functioning of the equipment. Small deviations in critical component dimensions could mean the difference between an item of equipment working properly and an item that fails completely. A critical item of equipment that fails on any vehicle could lead to a collision and possible injury or death. Non equipment related standards are also prescriptive and critical. In order to properly and safely operate a vehicle, a driver must pass a written knowledge test as well as demonstrate an ability to operate the vehicle.

LOCAL MANDATE

These regulations do not impose any new mandate on local agencies or school districts.

ECONOMIC IMPACT ON BUSINESS

The CHP has not identified any significant adverse impact on businesses. Businesses involved in the transportation of interstate and intrastate commerce via commercial trucking may choose to purchase the current Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria at a cost of approximately \$42 annually at www.cvsa.org. These businesses will not otherwise experience any greater effect due to the implementation of the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria, April 1, 2011, Edition, than is already commonly known and accepted.

FISCAL IMPACT TO THE STATE

The Department has determined these regulation amendments will result in:

- No significant increase in costs for owners or operators of commercial vehicles. This rulemaking action will simply provide a regulatory basis to enforce the out-of-service criteria that is already being used by the CHP and throughout North America;
- No significant compliance cost for persons or businesses directly affected;
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public;

- No impact on the level of employment in the state; and
- No impact on the competitiveness of this state to retain businesses, as state, provincial and national governments throughout North America have already adopted these requirements.

CREATION OR ELIMINATION OF JOBS IN THE STATE OF CALIFORNIA

The CHP has made an initial determination that this proposed regulatory action , will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California, will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states, and will continue to provide a nonmonetary benefit to the protection and safety of public health, employees and safety to the environment because changes to the application of the regulation are not substantive and bring the regulation in conformance with existing statute. Minor addition and changes to the out-of-service criteria are clarifying in nature and all are within exiting requirements for industry.